

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

FREDRICK VANCE

PLAINTIFF

V.

CIVIL ACTION NO.4:06CV129-WAP-JAD

ROBERT BENFORD, et al.

DEFENDANTS

REPORT AND RECOMMENDATION

On January 17, 2007, plaintiff, an inmate of the Mississippi Department of Corrections, appeared before the court, via video, for a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) to determine if there exists a justiciable basis for his claim filed pursuant to 42 U.S.C. §1983.

The plaintiff complains about alleged due process violations in the handling of three RVR's. He does not allege that Lawrence Kelly or Christopher Epps had any personal involvement in the incident, nor are overall policies and practices implicated in the allegations in the complaint. In a § 1983 action the employers and supervisors cannot be held liable for the actions of prison employees under a respondeat superior theory of liability. *Monell v. Department of Social Services*, 436, U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 611(1978).

Accordingly it is recommended that the defendants Kelly and Epps be dismissed with prejudice . Process has been accepted by prison officials for the remaining defendants.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.2(D) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten

days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Plaintiff is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 18th day of January, 2007.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE